



U.S. Department of Justice
Criminal Division
Appellate Section

Filed Electronically

April 20, 2022

Hon. Molly C. Dwyer, Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
The James R. Browning U.S. Courthouse
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Forbes Media LLC et al. v. United States*, Nos. 21-16233 & 21-35612
Citation of Supplemental Authority (Fed. R. App. P. 28(j), Cir. R. 28-6)

Dear Ms. Dwyer:

On April 5, 2022—the day after the government filed its brief in this Court—petitioners moved to intervene and unseal records in a closed criminal case, *United States v. Aleksei Yurievich Burkov*, No. 15-cr-245 (E.D. Va.). *Burkov* was one of the cases listed in the S.D. Cal. application, which, as discussed in our brief (p. 3), identified All Writs Act (AWA) orders that had purportedly issued in four other districts. *See* ER-85. To our knowledge, *Burkov* is the only one of the listed cases in which petitioners had not previously attempted to obtain access to the AWA proceedings. *Cf.* Gov’t Br. 3-7 (discussing petitioners’ requests in N.D. Cal. and W.D. Wash.); *id.* at 3 n.3 (discussing petitioners’ pending motion in W.D. Pa.).

In response to petitioners’ motion in *Burkov*, the government has informed the district court that it does not object to the unsealing of, *inter alia*, the three documents relating to AWA orders that had issued in those now-concluded proceedings. *Burkov*, Dkt. No. 86, at 2 (Apr. 20, 2022). The government further stated that, although it “does not believe that the entry of a final judgment and the defendant’s release from imprisonment will always be dispositive as to whether unsealing AWA materials is appropriate[,] . . . on the facts of this case, the government believes that sealing is no longer necessary.” *Ibid.* The district court has not yet ruled on petitioners’ motion.

The government's assent to disclosure in the Eastern District of Virginia is consistent with our position (Gov't Br. 48-49) that a different analysis may apply should petitioners "renew their request at a time when opening the technical-assistance proceedings will not endanger the very investigation those proceedings were intended to facilitate." In *Burkov*, the government recognized and sought to accommodate an interest in public access once the target of the AWA orders had been apprehended, the investigation concluded, and the criminal proceedings closed. By contrast, the materials contested before this Court contain sensitive law-enforcement information relating to, *inter alia*, ongoing fugitive-apprehension operations and thus implicate substantial governmental interests that justify their continued sealing.

Respectfully,

s/Joshua K. Handell

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Enclosure: Government's Response to Forbes Media LLC and Thomas Brewster's Motion to Intervene and Unseal, *United States v. Aleksei Yurievich Burkov*, No. 15-cr-245, Dkt. No. 86 (E.D. Va. Apr. 20, 2022)

CERTIFICATE OF COMPLIANCE

I hereby certify that this letter complies with the requirements of Federal Rule of Appellate Procedure 28(j) because it contains 347 countable words, as verified by the word-count feature of Microsoft Word.

s/Joshua K. Handell

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2022, I caused the foregoing letter to be served upon all filing users through the Court's CM/ECF system. Electronic service will be effected by the Court's CM/ECF system.

s/Joshua K. Handell

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